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09/310,912	05/13/1999	ALEXANDER ERIK MERICAS	AT9-99-073	9544

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EXAMINER

CHAVIS, JOHN Q

ART UNIT

PAPER NUMBER

2124

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 9

Application Number: 09/310,912

Filing Date: May 13, 1999

Appellant(s): MERICAS, ALEXANDER ERIK

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Duke W. Yee  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed August 14, 2002.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is deficient because the applicant's invention is defined by the metes and bounds of the claims; however, the features listed in the second line of the summary is not in any of the claims. For example, the applicant discusses "predicting the outcome of conditional branches of certain instructions before the data on which the certain instructions depend is available". It is not clear which claim this feature is listed in. Much of the applicant's arguments appears to be based on information disclosed in the specifications, instead of the claimed information.

**.....Limitation not in claims**

Applicant is arguing the predicting feature indicated above. These limitations are not found in the claims. Claimed subject matter not the specification, is the measure of the invention. Disclosure contained in the specification can not be read into the claims for the purpose of avoiding prior art. **In re Sporck**, 55 CCPA 743, 386 F.2d924, 155 USPQ 687 (1986).

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 1-17 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7). The applicant merely provides a statement, no reasons to support his statement is provided.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

6,112,236

Dollin et al.

8-2000

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-4, 6-10, 12, and 14-17 are rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office Action, Paper No. 4.

Claims 2, 5, 11 and 13 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 4 (copy attached).

**(11) Response to Argument**

In reference to the 35 USC 102(e) rejection referenced above in item 10, the applicant rehashes arguments presented in the final rejection. That is, he indicates that his system monitors events that occur during the execution of instructions by a speculative processor, generates a

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count of occurrences of the events for all instructions executed by the speculative processor and generates a count of occurrences of the events for instructions completed by the speculative processor. Then, he goes on to define a speculative processor. He indicates that a speculative processor is a modern processor that **may** speculatively execute instructions that **may** be cancelled or flushed without completely executing because the condition for which they were speculatively executed did not occur. Again, it is not clear (1) where this feature is in the claims, as indicated above; or (2) how this is different from Dollins event processors (figure 1, items 12 and 14 and col. 5 line 41-46). The applicant makes multiple references to the specifications (for example, on page 5, 1<sup>st</sup> complete paragraph, he refers to page 3 lines 1-6) for support for his claimed invention, this makes it appear that the specifications (instead of the claims) is being argued over the cited reference. A standard processor is considered to provide for execution of event (occurrences that may or may not be satisfied) functions or programs and canceling the functions or programs if the event being monitored does not occur (i.e. "discarding events", col. 5 lines 4-7) to free up space being utilized. Thus, Dollin's processors indeed are also considered to provide for this feature.

The applicant further appears to indicate that Dollin does not provide a processor (page 5, second complete paragraph); however, see again the references above. Furthermore, the processors are considered to provide for each of the features claimed. Then, he indicates that Dollin provides processors 12 and 14, as indicated above. The applicant's statements on page 6 (first complete paragraph) are then sufficient to indicate that Dollin provides processors and as indicated above the processors provide for the applicant's definition of speculative features, as indicated above; although the features are not apparent in the claims.

Then, the applicant continues to argue the definition of “speculative processors”, which is not supported by his claims. Therefore, no further discussion on this matter is deemed necessary; since, the applicant merely mentions the term and provides no support in the claims to indicate that anything other than standard feature provided for by any general processor exist. The applicant further indicates that Dollin does not teach or suggest associating events with instructions executed by a speculative processor; while Dollin’s “determining, comparing, discarding, comparing” are all instructions, associated with events (counting of lost, inserted and corrupted functions) executed by his processor (which inherently, based on the characteristic or functionality of events, may or may not completely execute instructions when the event does not occur). Furthermore, again, the applicant appears to stretch his argument in an attempt to incorporate the specifications in the claims. An example of this is illustrated via the applicant’s argument about “flushing an event”, which is not specified in the claims.

Moreover, the applicant indicates that no analysis has been presented to indicate why Dollin’s “inserted events” are equivalent to occurrences of the specified event for instructions completely executed. While, it is clear that “inserted events” are “all instructions that are executed by Dollin’s processor” in order for monitoring to occur to determine if the event criteria has been satisfied, col. 8 lines 35-45. He further indicates that “corrupted events” does not provide an indication of instructions that are completely executed. However, the feature is inherent to determine the quality of service.

The applicant further argues that Dollin does not teach associating an interim counter with a particular; while again, the quality of service feature which generates reports based on “all instructions”, “completed instructions” and “lost” or “failed instructions”, (Dollin) col. 5 lines

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47-55 and col. 12 lines 3-8, clearly provides for the feature. In reference to the applicant's discussion of claim 6, see again the discussion above. That is, differences are inherently calculated to determine "quality of service".

In reference to claim 7, note in the abstract that "whenever an event is detected, an event report is generated". Therefore, Dollin is considered to utilize a first counter (whenever an event is detected, see the abstract and the (Quality of Service) QOS unit in col. 11 lines 61-col. 12 line 8) and a second counter (to indicate when a match does not occur) and the third counter for keeping a count of the completed matches to enable efficient report generation and specifying QOS as is known in the art, as a percentage of matches completed over the total to determine performance (QOS).

The features of monitoring a plurality of events (claims 3, 8-10 and 14) are taught via Dollin in col. 11 lines 5-14. The applicant further claims that Dollin does not teach monitoring a plurality of specified events **for each instruction executed by the speculative processor**. The applicant should note that Dollin's event monitoring is inherently for each instruction executed to ensure that the desired instruction (specified event) is not overlooked because again it has to be evaluated to determine if the event is satisfied, col. 8 lines 35-45. Furthermore, Dollin's entire monitoring process occurs at one (the receiver, i.e. within a data processing system) of the processors for each instruction executed, see the abstract. In other words, in Dollin's system, each instruction executed (per specified event) must have been monitored accordingly to ensure that the desired instruction has not been overlooked.

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In reference to the 35 USC 103 rejection of claims 2, 5, 11 and 13, the applicant merely rehashes arguments discussed in the first action and again above. Therefore, those features will not be repeated again.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jqc  
November 2, 2002

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